



136088 *India*
CB
VM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 26 1995

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Administrative Order on Consent for recovery of costs from U.S. Chemical Company regarding the Metamora Landfill Site, Site No. 6H9

FROM: *T. Leverett Nelson*
T. Leverett Nelson, Acting Chief
Solid Waste and Emergency Response Branch

TO: Jodi Traub, Associate Division Director, Waste Management Division *Jodi Traub 4/27/95*
Robert Springer, Assistant Regional Administrator for Planning and Management

Attached please find a copy of the EPA Enforcement Accounts Receivable Control Number Form for the Administrative Order on Consent for recovery of costs from U.S. Chemical Company regarding the Metamora Landfill Site. The settlement provides for recovery of \$939,099 under Section 107 of CERCLA. U.S. EPA is to receive \$332,256.00 by May 25, 1995. U.S. EPA is also to receive payments of \$600.00 per month by no later than the 12th of each month beginning March 1, 1995 pursuant to the assignment of a land contract to U.S. EPA and quarterly payments of \$12,500 payable the first of each calendar quarter pursuant to the assignment of an asset purchase and sale agreement. The facility is located on Dryden Road in Lapeer County, Michigan.

The attorney assigned to this case in the Office of Regional Counsel is Connie L. Puchalski. She may be contacted at 886-6719, if your staff have any questions.

Attachments

cc: Mary Ellen Ryan, Acting Chief
Superfund Accounting Section (w/ attachments)
Linda Nachowicz, RPM (w/ attachments)

Carla Aschbacher, CDSI (w/o attachments)
Oliver Warnsley, Chief
Cost Recovery Unit (w/o attachments)
Connie L. Puchalski (w/o attachment)
Frank Bentkover, DOJ (w/o attachments)

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

Instructions for Completion {Check Applicable Description(s)}

Non Superfund Administrative Orders and Settlements

Regional Hearing Clerk prepares this form and sends a copy to FBM with copy of the order; FBM adds tracking number, then FBM sends copies of the form with copy of the first page of the order to the Program Office and Carla Aschbacher, ORC. Program Office sends copy of the CAFO transmittal letter to FMB. FBM collects payment.

X Superfund Administrative Orders and Settlements

Waste Management prepares this form, and sends copies to the Clerk Docket Log [WMD], SFA [PMD], and ORC [Carla Aschbacher] with copy of the order. FMB collects payment.

Non Superfund Judicial Orders and Settlements

ORC prepares this form, includes the form in its settlement sign-off package and sends copies to Carla Aschbacher [ORC], FBM, the Program Office and the Debt Tracking Officer, Environmental Enforcement Section, DOJ, Rm. 1647D, P.O. Box 7611, Benjamin Franklin Station, Washington, D.C. 20044, with a copy of the order. U.S. Attorney collects payment.

Superfund Judicial Orders and Settlements

ORC prepares this form, includes the form in its settlement sign-off package and sends copies to Tom Pernell [ORC], Superfund Program Management Branch - Cost Recovery Unit [WM], and SFA. FMB collects payment.

New Action

Modification of Existing Administrative or Judicial Action
[Including Bankruptcy Stays or Discharges]

\$939,099.00 **Amount of Settlement**

[If installment, attach schedule, dates, and amounts]

V-W-95-C-291 **Docket Number**

6H9 **Superfund Site Specific Number**

Superfund **Waste Management Program Office**

Connie L. Puchalski **Name of Person Preparing Form**

April 26, 1995 **Date of Preparation**

886-6719, CS-29A **Telephone Number and Office Code**

To Be Completed By Financial Management Branch

_____ IFMS Accounts Receivable Control Number

_____ FBM Contact and Telephone Number

IN THE MATTER OF:)	AGREEMENT FOR PAYMENT
)	OF RESPONSE COSTS
)	
METAMORA LANDFILL)	U.S. EPA Region V
Lapeer County, Michigan)	CERCLA Docket No.
)	V-W-85-C-291
U.S. Chemical Company)	PROCEEDING UNDER SECTION
)	122(h) (1) OF CERCLA
SETTLING PARTY)	42 U.S.C. 9622(h) (1)

This Agreement is made and entered into by the United States Environmental Protection Agency ("EPA") and the U.S. Chemical Company ("Settling Party"). This Agreement concerns the Metamora Landfill Site (the "Site") located in LaPeer County, Michigan. The purpose of this Agreement is for EPA to recover "Past Response Costs" as defined in Paragraph 2 and to resolve the liability of the Settling Party for all costs related to the Site.

EPA is authorized to enter into this Agreement pursuant to the authority vested in the Administrator of the EPA by Section 122(h) (1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Oct. 31, 1989).

WHEREAS, EPA alleges that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. 9601(14), are present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9);

WHEREAS, EPA alleges that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604, and may require additional response action to be undertaken;

WHEREAS, EPA alleges that in performing this response action, response costs have been incurred at or in connection with the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604, and that additional response costs may be incurred;

WHEREAS, EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, the Attorney General or his designee has issued prior written approval of the settlement embodied in this Agreement pursuant to Section 122(h)(1) of CERCLA;

WHEREAS, EPA and the Settling Party desire to settle certain claims arising from the Settling Party's alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, EPA and the Settling Party, in consideration of the promises herein, and intending to be legally bound hereby, agree as follows:

1. This Agreement shall be binding upon EPA and shall be binding upon the Settling Party and its successors and assigns. Each signatory to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her. The Settling Party agrees to undertake all actions required by this Agreement. The Settling Party consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

2. Within 30 days of the effective date of this Agreement, the Settling Party shall pay to the Hazardous Substance Superfund 332,256.00 in reimbursement of EPA's claim for "Past Response Costs". "Past Response Costs" shall mean all costs including but not limited to direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA have incurred and paid at or in connection with the Site through May 15, 1991, including any costs reimbursed to the State of Michigan ("the State") or to a federal agency or department from the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code (the "Hazardous Substance Superfund"), plus accrued "Interest" on all costs through such date. "Interest," in accordance with 42 U.S.C. 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund, compounded on October 1 of each year.

3. Within 30 days of the effective date of this Agreement, the Settling Party shall assign to the EPA all payments and rights to receive payments from and including March 1, 1995 pursuant to its Land

Contract Receivable attached hereto as Exhibit 1 and assign to EPA all payments and rights to receive payments from and including March 1, 1995 pursuant to its Asset Purchase and Sale Agreement attached hereto as Exhibit 2. Settling party shall execute all documents necessary to assign to the EPA the rights to receive payments pursuant to the Land Contract and the Asset Purchase and Sale Agreement.

4. The payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name and address of the Settling Party, the Site name, and EPA CERCLA Number 6H9 and shall be sent by the Settling Party to: EPA Superfund, P.O. Box 70753, Chicago, Illinois 60604. The Settling Party shall simultaneously send a copy of its check to Connie L. Puchalski, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604.

5. In the event that the payment required by Paragraph 2 is not made when due, "Interest", as defined in Paragraph 2, shall continue to accrue on the unpaid balance through the date of payment. If the amount due to EPA under Paragraph 2 is not paid by the required date, the Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by this Paragraph \$1,000.00 per violation per day that such payment is late. If the Settling Party does not comply with any other requirement of this Agreement, the Settling Party shall pay to EPA, as a stipulated penalty, \$5,000.00 per violation per day of such noncompliance. Stipulated penalties are due and payable within 30 days of the Settling Party's receipt from EPA of a demand for payment of the penalties. All payments to EPA

under this Paragraph shall be made in accordance with Paragraph 4. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

6. In addition to the Interest and Stipulated Penalty payments required by Paragraph 5 and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Agreement, if the Settling Party fails or refuses to comply with any term or condition of this Agreement, Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA. If the United States, including EPA, must bring an action to enforce this Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

7. Subject to Paragraph 10 (Reservations of Rights), upon payment of the amounts required by Paragraphs 2 (Past Response Costs) and 4 (Interest and Stipulated Penalties for Late Payment) and assignment of the Land Contract and Asset Purchase and Sale Agreement required by Paragraph 3, the Settling Party shall have resolved any and all civil liability for "Matters addressed" in this settlement. "Matters addressed" shall mean all response costs incurred and to be

incurred directly or indirectly by the U.S. EPA, the Department of Justice on behalf of the EPA, or any potentially responsible party at or in connection with the Site including but not limited to all removal and remedial costs. This resolution of liability is conditioned upon the complete and satisfactory performance by the Settling Party of its obligations under this Agreement. This resolution of liability extends only to the Settling Party and does not extend to any other person.

8. Settling Party has informed EPA that the sole remaining assets of Settling Party consist of cash, the Land Contract receivable and the Asset Purchase and Sale Agreement receivable described in paragraphs 2 and 3 of this agreement. This settlement is null and void if EPA determines that the information provided to EPA outlining all of the assets of the Settling Party was materially false. Provision of false, fictitious, or fraudulent statements or representations to the United States may subject the Settling Party to criminal penalties under 18 U.S.C. 1001.

9. Except as provided in Paragraph 7, nothing contained herein shall in any way limit or restrict the response or enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, or any other provision of law, against the Settling Party or against any other person or entity not a party to this Agreement. The resolution of liability set forth in Paragraph 7 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Agreement is

without prejudice to, all rights against the Settling Party with respect to all other matters, including but not limited to the following:

a) liability for failure by the Settling Party to meet any requirement of this Agreement;

b) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

c) liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant or contaminant outside of the Site;

d) liability arising from the future treatment, disposal, release or threat of release of a hazardous substance, pollutant or contaminant at the Site;

e) criminal liability;

f) liability for past, present or future violations of federal or state law other than liability resolved by this Agreement; and

g) liability for further response actions relating to the Site or the reimbursement to the United States for additional costs of response if unknown conditions or new information reveal that the remedy fails to protect human health and the environment.

10. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States

may have against any person, firm, corporation or other entity not a signatory to this Agreement.

11. The Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to "Matters addressed", or this Agreement, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9611, 9612, or 9613, or any other provision of law, any claim against any department, agency or instrumentality of the federal government pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, related to "Matters addressed", or any claims arising out of response activities at the Site. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 C.F.R. 300.700(d).

12. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. The United States and the Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

13. With respect to claims for contribution against the Settling Party, the Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4), for "Matters addressed" as defined in Paragraph 7. Such protection is conditioned upon the Settling Party's compliance with the requirements of this Agreement. The Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Party also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Agreement.

14. In any subsequent administrative or judicial proceeding initiated by EPA or the United States on behalf of EPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph

affects the enforceability of the resolution of liability included in Paragraph 7.

15. Settling Party certifies that, to the best of its knowledge and belief, it has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership or operation of the Site or to the generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site. Settling Party further certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. 6927. Provision of false, fictitious or fraudulent statements or representations to the United States may subject the Settling Party to criminal penalties under 18 U.S.C. 1001.

16. This Agreement shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or

11

considerations which indicate that this Agreement is inappropriate, improper or inadequate.

17. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 16 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Chemical Company

By: Shirley P. Greenway, Attorney February 21, 1995
William D. Greenway
U.S. Environmental Protection Agency

By: Robert Springer February 22, 1995
VALDAS V. ADAMKAS